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ABSTRACT

In this report, the Child Welfare Project (CWP) of the Office of the Public Advocate examines New York City's child welfare social services infrastructure and the family court. It is based on child fatality reports for the year 2000 submitted to the Office of the Public Advocate by the New York State Office of Children and Family Services; child welfare cases handled by CWP staff from January 1 through September 30, 2002; interviews with service providers, advocates, and parents; and reviews of reports, meetings, and conferences. Since early 1995, the CWP has helped more than 5,000 families and children in New York City's child welfare system. The project's mission is to ensure that families involved in the city's child welfare system are treated fairly, know their rights and responsibilities, and receive the services to which they are entitled. CWP engages in a wide range of activities, investigating complaints and promoting system reform through collaborative projects and education. The report concludes that the child welfare system is so overburdened that there are long delays in resolving cases and finding permanent homes for children. In some cases, the physical and emotional well-being of children is compromised. The report examines the social services infrastructure and the family court to analyze how the culture of the system--and its adversarial, one-size-fits-all approach--can work against the goals of protecting children and strengthening families. (Contains 107 footnotes.) (Author/SM)

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Families at Risk:

A Report on New York City's Child Welfare Services

Issued by the Office of the Public Advocate for the City of New York

Public Advocate Betsy Gotbaum

December 9, 2002

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TABLE OF CONTENTS

Executive Summary 1
Introduction 6

1. Overview of the Child Welfare System 6
A. Reforms in Motion 6
B. Child Protective Services 8
C. Foster Care, Adoption and Family Reunification 9
D. Special Needs of Adolescents 10
E. Poverty and the Economy 10
F. The Costs of Child Abuse and Neglect 11
G. Gaps in Parenting Education 11
H. Preventive Services 12
I. Family Court 14
J. Pending Federal Review 14

2. Review of Child Fatality Cases 15
Some Deaths are Avoidable 16
Inadequate Monitoring of Foster Homes 16
Inadequate Interventions with Families 16
Infants and Very Young Children 17
Analysis 19

3. Review of Child Welfare Project Cases 21
A. The Overwhelmed System 21
Families Seeking Reunification 21
Family Court Delays 24
The Illinois Success Story 27
The Overwhelmed Front Door 27

B. The Adversarial Culture 29
C. Child Safety is Sometimes Compromised 33
D. Adversarial Relationships Between Parents and Foster Care Agencies 34
E. The System is Overly Punitive 35
F. The Child Welfare System Cannot do it Alone 35

4. Recommendations 37

Families at Risk
A Report on New York City's Child Welfare Services

Executive Summary

Scope

In this report, the Child Welfare Project (CWP) of the Office of the Public Advocate examines New York City's child-welfare social services infrastructure and the Family Court. The report is based on child fatality reports for the year 2001 submitted to the Office of the Public Advocate by the New York State Office of Children and Family Services;[1] child welfare cases handled by CWP staff from January 1 through September 30, 2002; interviews with service providers, advocates, and parents; and reviews of reports, meetings and conferences.

Since early 1995, the Child Welfare Project has helped more than 5,000 families and children in New York City's child welfare system.[2] The project's mission is to ensure that families involved in the city's child welfare system are treated fairly, know their rights and responsibilities, and receive the services to which they are entitled. CWP engages in a wide range of activities: investigating complaints and promoting system reform through collaborative projects and education. CWP is a program of the Fund for Public Advocacy, a not-for-profit corporation affiliated with the Office of the Public Advocate.

The report concludes that the child welfare system is so overburdened that there are long delays in resolving cases and finding permanent homes for children. In some cases the physical and emotional well-being of children is compromised. The report examines the social services infrastructure and the family court to analyze how the culture of the system—and its adversarial, one-size-fits-all approach—can work against the goals of protecting children and strengthening families.

Contents

1. Overview of the Child Welfare System
2. Review of Child Fatality Reports 2001
3. Review of Child Welfare Project Cases
4. Recommendations

Background

Last fiscal year alone, the City investigated 55,925 reports of abuse and neglect involving nearly 90,000 children.[3] One in four children in the city at one time or another has had contact with the child welfare system.[4] Last year, over 7,000 children in New York City were removed from their families and placed in foster care. While foster care rolls are declining, the City's foster care rate

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[1] Under NYS Social Services Law § 20(5), the State Office of Children and Families Services (OCFS) must investigate deaths of children in the custody of authorized agencies throughout the state. Those that relate to the deaths in New York City must be forwarded to the Public Advocate, among others.

[2] For more information about CWP, see Appendix I.

[3] Mayor's Management Report (October 2002) www.nyc.gov/acs. This is the second largest total over the last six years.

[4] Administration for Children's Services (2002), *Child Abuse and Neglect Statistics*, www.ci.nyc.ny.us/html/acs/html/getinvolved/abuseprevent_stats.html.

remains double the national average.[5] Foster care is seven times more costly than prevention – in the current year the city is spending $118 million on prevention, but nearly $800 million on foster care. [6] Even more disturbing is the fact that the average length of stay in foster care for city children is 49 months[7], far exceeding the national average of 33 months.[8]

In response to federal laws, New York City and New York State are required to resolve cases more quickly, but no new funding has been forthcoming to support these goals. Foster care caseworkers average 23-25 cases each, twice the recommended national standard. For each case, workers are supposed to provide services to the children, birth parents and foster parents. Many of the children in foster care have special needs, and therefore require more attention and services than agencies are able to provide. Factoring in low pay, it is no wonder that annual caseworker turnover rate is 40%.[9]

Problems and Solutions

The evidence examined in this report suggests that despite real progress over the last several years, the system remains in need of repair. The City's Administration for Children's Services (ACS), contract agencies, and the courts are overwhelmed by the sheer volume of cases. The overload of the system impacts the protection of children from abuse and neglect and the ability of agencies to provide quality services to families. There are insufficient numbers of caseworkers, attorneys and judges to manage these dire situations. As a result, mistakes are made at both ends of the spectrum: some children die because of missed warning signs; others remain apart from their families unnecessarily. Balancing competing concerns is not easy, and it is not the Public Advocate's intention to blame the city or its workers.

The waste of resources on adversarial child protective investigations and court proceedings exacerbates the problem. While the city should be credited with establishing that child abuse will not be tolerated, a vast majority of cases brought to the city's attention are allegations of neglect, not abuse. The adversarial approach may be appropriate in some cases, but not when a modest level of support services in the community can help children and families. Yet as a result of the adversarial approach, many of the city's most needy fear child welfare authority and remain isolated rather than seek help. A substantial number of the city's children are from immigrant families. Stronger efforts are needed to educate families about the city's child welfare standards as well as train child welfare staff how to work effectively with newer Americans.

The one-size-fits-all model of child protective services is part of a statewide system that is no longer in favor. Recognizing that as many as 80% of all investigations result in closed cases—with

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[5] Sources: Child Welfare Watch, *Uninvited Guests: Teens in New York City Foster Care*, Fall 2002, No. 8; Mayor's Management Report (2002), at www.nyc.gov/acs; National Clearinghouse on Child Abuse and Neglect Information, Children's Bureau-Administration on Children, Youth and Families (April 2002).

[6] City of New York, *Executive Budget 2003*.

[7] Mayor's Management Report (October 2002). Contributing factors include the great amount of time it takes the city to finalize adoptions, and the number of adolescents who remain in care past their 18th birthday

[8] U.S. Department of Health and Human Services, Administration for Children and Families, *The AFCARS (Adoption and Foster Care Analysis and Reporting System)Report, Interim FY 2000 Estimates as of August 2002*. www.acf.hhs.gov/programs/cb.

[9] For more details about this problem, consult the Council on Family and Child Caring Agencies (COFCCA), www.cofcca.org.

no services provided to the family—legislation was introduced (but not yet passed) in Albany last year to research alternative approaches.[10]

Foster care is not the safe haven it is meant to be. Confirmed reports of abuse and neglect occur in foster homes at a rate that exceeds that of the general population. Some children are separated from their siblings, have insufficient contact with their families, and experience disruption in their education.[11] Children and parents may see each other for only 4-8 hours per month.

Adolescents in foster care leave the system unprepared life. From July 2000 to June 2001, more than half of the young people taken by the police to the city's juvenile detention facilities had at some point in the past been the subject of abuse and neglect investigations by ACS. About one-quarter were either in foster care or had an active preventive service case at the time of detention.[12] The expansion of Person in Need of Supervision (PINS) laws to allow parents to place children as old as 17 in foster care threatens to further strain an overburdened system.[13]

During a protracted fiscal crisis, the solutions to these problems are daunting. Impending budget cuts will impede ACS and family court reform efforts. This demands of the system a wiser use of funds, maximizing use of the city's vast array of social services, more help from the state and federal government, as well as a fundamental change in the way in which children and families are treated.

Major Findings

I. Fatality reports expose casework deficiencies and avoidable deaths.
According to reports by the state, the number of child fatalities in families known to the child welfare system has risen for the second successive year. In 2001 and 2000 combined, 100 children died who were known to the system, compared with 59 fatalities during the previous two-year period. A careful analysis of 2001 fatalities reveals that as many as 26 deaths could have been avoided by better monitoring of foster homes, better intervention with families and more education about the appropriate care of young children. In one case, the foster care agency should have instructed foster parents on safe sleeping arrangements for infants to prevent death by asphyxiation of a three month old.[14] In another example, if ACS had heeded signs of unexplained bruises, a three-year-old girl might not have died.[15]

II. Funding priorities perpetuate a crisis-driven system.
Child welfare financing is skewed toward costly out-of-home care as opposed to child abuse prevention. Only 5% of the Administration for Children's Services' $2 billion budget is spent on

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[10] For more information about this legislation, Contact Karen Schimke, Executive Director of Schuyler Center for Analysis and Advocacy (SCAA) www.scaany.org, or the Office of Assemblymember Roger Green (518) 455-5325. The National Conference of State Legislatures has information about child protection reform efforts in other states, www.ncsl.org.

[11] Office of the New York City Public Advocate and The Child Welfare Project, May 2001, *Children Still at Risk* (citing reports by The New York State Office of Children and Family Services and Advocates for Children).

[12] Child Welfare Watch, *supra note* 5 (citing a report by the Vera Institute of Justice).

[13] Leslie Kauffman, " For Unruly Teens, Respite Care is Better Than Foster Care, New York Times, October 28, 2002.

[14] See Child Fatality Report No. 97-01-011 on page 18, *Supra note 69*.

[15] See Child Fatality Report No. 95-01-051 on page 17, *Supra note 68*.

prevention. Nearly all city-funded prevention programs focus on serving families after a problem has occurred. While one-quarter of New York City children have been involved in the child welfare system, there is no system devoted to *preventing* abuse and neglect.

III. An overburdened system prevents timely resolution of cases and adequate monitoring.

Insufficient numbers of caseworkers, attorneys and judges leads to inadequate interventions. In some cases foster homes are not monitored, service plans are not implemented, and long delays exist in locating permanent homes for children. Family court takes on average 6-8 months just to resolve whether or not neglect or abuse occurred. Cases are adjourned because of unavailable or unprepared participants, and parents often report they do not receive the help they need from their caseworkers. Foster care is not the safe haven it is meant to be. Confirmed reports of abuse and neglect occur in foster homes at a rate exceeding that of the general population. In fiscal year 2002, there were 1,485 investigated reports of alleged abuse in family foster homes.[16]

IV. The culture of the system undermines the goals of protecting children and strengthening families.

Child protective investigations are initiated within a punitive framework, which includes prosecutorial family court proceedings. These investigations focus on proving or disproving incidents of wrongdoing. This practice emphasizes family weaknesses as opposed to using family strengths to correct the problems. The resulting mistrust can lead to poor communication and lack of cooperation between the parties. Interviews with parents served by the Child Welfare Project reveal that the investigation process itself can be harmful to children and families, and there are often stories about unnecessarily harsh interventions. There have been promising efforts to change the culture in states such as Minnesota and Missouri, and the county of Westchester, where the emphasis is on family engagement and timely implementation of services in the home.

Recommendations

I. Expand the array of preventive services to help more families prior to a crisis.

A 20% reduction in the foster care rolls would save approximately $160 million in one year. Overall, the city should move toward a public health approach to child welfare. Resources from the public and private sectors must be mobilized to provide universal up-front prevention, through public awareness campaigns, parenting education, home visiting and other programs that offer support services in communities. Special attention must be paid to immigrant families, young parents and adolescents. There are programs that are effective in preventing abuse and neglect and costly foster care placement. Stronger efforts are needed to replicate these.

II. Reform child protective services so that the system can respond more flexibly.

The state legislature should pass permissive legislation similar to Minnesota to authorize a three-year demonstration project to pilot and evaluate the "dual track" approach, which emphasizes cooperative work with families in lower risk cases, instead of adversarial investigations. Research from other states demonstrates that this approach increases child safety. Even without legislation or new funding, ACS can build on its current efforts to increase referrals to agencies that can provide the services that families need and improve staff interactions with families.

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[16] Administration for Children's Services, Management, Development and Research (2002).

III. Expand pilot projects in the courts to reduce congestion and delays.
The federal government must provide the state with sufficient resources to comply with federal laws that require timely resolution of child welfare cases to achieve stability for children. This means sufficient numbers of attorneys, judges and social workers to implement best practices that ensure (1) access to services, (2) accountability over ACS and contract foster care agencies, and (3) case conferencing and mediation. The State legislature must increase the per-hour fees paid court-appointed attorneys that have been frozen since 1986.

IV. Create incentives for foster care agencies to resolve children's placements earlier.
The state and ACS should replace the outmoded *per diem* system of payment to foster care agencies with a system that offers more incentives for achieving permanence. In Illinois, a system of subsidized kinship guardianships has enabled thousands of relatives to care for their children. New York should do the same.

V. Revise training for front-line staff and their superiors
There are ways to improve assessments and reduce the negative interactions among the various stakeholders. Training of staff at ACS, contract agencies and Family Court must focus on the building of relationships with families based on respect and an assessment of strengths as well as vulnerabilities. The Family Development approach, coordinated in the City by the Department of Youth and Community Development, and used in ACS Head Start programs, is an excellent model. Punitive accountability and coercion must be replaced by practices that promote shared responsibility between families and staff. System practitioners must treat families as respectfully as they want families to treat children. There must also be focus to improve interactions between line workers and their superiors. Foster parents need more support and training as well, as they often care for children with special needs.

Introduction

In this report, the Child Welfare Project (CWP) of the Office of the Public Advocate examines some serious obstacles to the full realization of child welfare reform efforts. We primarily examine the social services infrastructure to learn how this overburdened system means long delays in case resolution and permanent placement for children. Some attention is given to the Family Court, which we explored fully in our May 2000 report *"Justice Denied..."*that documented the crisis in legal representation for parents.[17] We also look at how the culture of the child welfare system—and its one-size-fits-all approach—can work against the goals of protecting children and strengthening families.

This report is based on the following sources: child fatality reports for the year 2001 sent to the Office of the Public Advocate by the New York State Office of Children and Family Services;[18] cases handled by CWP staff from January 1 through September 30, 2002; interviews with service providers, advocates, and parents; and review of reports, meetings and conferences.

1. Overview of the Child Welfare System

The successful functioning of the city's child welfare system is dependent on two distinct but related parts. The first is the social service system, which includes: child protective services, managed by the city's Administration for Children's Services (ACS); foster care services, 90% of which is contracted to nearly 50 voluntary agencies; and neighborhood services to prevent foster care, provided by 90-100 non-profit agencies that contract with the city. The current year's executive budget for ACS is $2.3 billion including $1.17 billion in federal funds, $623 million in city funds, and $517 million in state funds.[19]

The second is the family court, which decides whether or not children have been neglected or abused; and also helps determine whether children should return home to their parents; adopted; or, in the case of adolescents, permitted to remain in foster care through age 21. In theory, the court serves as a check and balance on the social service system by ensuring that reasonable efforts are made to prevent the need for removal, when appropriate, as well as ensure that progress is made to either reunite families or finalize adoptions.

A. Reforms in motion

It is important at the outset to acknowledge the efforts made by the New York City Administration for Children's Services (ACS) to transform the child welfare system in recent years.[20] Those efforts have shown promise and should be continued. ACS has made progress in reshaping a system with a better prepared workforce, greater accountability over its contract

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[17] Office of the New York City Public Advocate and C-PLAN: Child Planning and Advocacy Now, *Justice Denied: The Crisis in Legal Representation for Birth Parents in Child Welfare Proceedings* (May 2000). Available by contacting the Child Welfare Project (212) 669-4955.

[18] New York State Social Services Law, *Supra note* 1.

[19] The City of New York, *Executive Budget Fiscal Year 2003.*

[20] For more information about ACS reform efforts, see their reports at www.nyc.gov/html/acs/.

foster care agencies and in creating a neighborhood-based service system, a tremendous undertaking. There are efforts to improve child protective services, such as newly appointed clinical consultation teams to provide additional support to staff in the areas of domestic violence, mental health and substance abuse.

Additional case conferences have been implemented to improve planning and service delivery, and initiatives to make it easier for families and youth to access housing. There are ongoing efforts to improve parent involvement and the quality of visits for children in foster care and their families. ACS also has a college office that is making it easier for youth to apply for and obtain higher education. A new Office of Youth Development has been created to improve services for adolescents. ACS has also greatly increased its ability to produce data and track the progress of their reform efforts.[21]

Many of these steps were initiated under the leadership of former Commissioner Nicholas Scoppetta. His successor William Bell, along with his staff, has demonstrated a deep commitment to strengthening the system and is willing to work with the advocacy community. With ACS's consent, The Special Child Welfare Advisory Panel, with support from the Annie E. Casey Foundation, is continuing under the leadership of Gail Nayowith, Executive Director of the Citizens Committee for Children. The Panel, which consists of a group of child welfare experts, will be working with ACS and contract foster care agencies on a number of areas, including family engagement and improving services to adolescents.[22]

In Family Court, progress has been made through the leadership and efforts of Judge Judith Kaye of the State's Unified Court System and the Permanent Judicial Commission for Justice for Children; Judge Joseph Lauria, the Administrative Judge for NYC Family Court; and the Center for Court Innovation, among others.[23] For example, the family treatment court and model court promote cooperation and achieve timely reunification of families. Various initiatives by Judges to employ early case resolution and the use of social workers to help families receive services more quickly show promise and deserve support. There are also judicial training initiatives addressing issues of child development, health and the impact of separation from their parents.

The New York State Office of Children and Family Services (OCFS), both in Albany and in New York City should also be commended for ongoing efforts to emphasize positive outcomes for children and expand prevention through home visiting and other family support services. Assemblymember Roger Green, who has chaired the State legislature's committee on Children and Families, has been a strong voice for change, and he has both introduced and helped pass important legislation.

B. Child protective services

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[21] Id.

[22] For more information, see the Citizens Committee for Children website, www.kfny.org.

[23] For further discussion of court innovations see the websites of the New York State Unified Court System www.courts.state.ny.us and the Center for Court Innovation www.courtinnovation.org. Also see 2000 Status Report, National Council of Family and Juvenile Court Judges, *Victims Act Model Court Sites* http://www.pppncjfcj.org/html/model_courts.html. Also see, *Fixing Families: The Story of the Manhattan Family Treatment Court*, Journal of the Center for Families Children and the Courts, Volume 2, 2000.

ACS was created as a separate Mayoral agency in 1996 in response to several high profile child fatalities, such as the death of six-year-old Eliza Izquierdo. The new agency was intended to focus more on child safety. In fact, the reform plan clearly indicated that any doubts about a child's safety would result in the removal from harm's way.[24] In recognizing that these policies led to a large increase in the foster care rolls, ACS has been moving toward achieving a more balanced approach to keeping families together, when appropriate. Toward this end, they are increasing referrals to preventive services, developing neighborhood service networks, and are piloting an initiative in Queens to more strongly integrate child protective services with prevention.

Child protective frontline staff (called "specialists") have an extremely challenging job. They are required to enter the home of people they have never met and must confront families with the news that they have been reported for child maltreatment. From the time ACS receives the report from the State Central Register in Albany, they have 60 days to make a determination to either confirm ("indicate") the case or unfound the allegations. During this period, ACS is required to monitor the home and fully investigate the reported incidents. At any time they can refer the family to preventive services, or remove the children from the home (usually after obtaining a required Family Court order) if they believe they are in imminent danger or risk.

In Fiscal Year 2002 alone, there were 55,925 reports of child abuse and neglect (affecting over 80,000 children). Approximately one-third of these cases were confirmed. In Fiscal Year 2001, 40% of confirmed cases of abuse and neglect in New York City resulted in a removal, compared with the national average of 20%.[25] The city's rate is also double that of the remainder of New York State.

Recidivism rates are high. In Fiscal Year 2002, 18.3% of New York City families that were investigated experienced a repeat investigation within one year.[26]

Most reports for New York City children involve allegations of neglect, as opposed to abuse. In a majority of these cases, parents have not deliberately harmed their children, nor have they committed a criminal act. But New York State's child protective system responds to all reports of child maltreatment with a unilateral investigation, regardless of the severity of the allegation. This "one size fits all" approach has harmful effects. Investigations tend to be adversarial, putting families on the defensive, and limiting cooperation. They also tend to focus on incidents, rather than the total well-being of the child and overall family functioning. In a given year, nearly 80% of all investigations statewide result in a closed case with no services being provided.

Amid similar concerns, a growing number of states are either piloting or considering an alternative to the unilateral investigation known as a differential response system or "dual track." In this approach, which has been successful in Missouri and Minnesota, lower risk cases are assigned to a "family assessment" track which focuses on identifying needs and involving the family in resolving the problems. Evaluations have shown that child safety increases in family assessment

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[24] Administration for Children's Services, *Protecting the Children of New York: A Plan of Action for the Administration for Children's Services*, December, 1996.

[25] Sources: *Child Welfare Watch*, *supra* note 5; Mayor's Management Report (2002), at www.nyc.gov/acs; National Clearinghouse on Child Abuse and Neglect Information, Children's Bureau-Administration on Children, Youth and Families (April 2002), *Summary of Key Findings from Calendar Year 2000 (indicating that nationally about one-fifth of confirmed cases of neglect or abuse result in foster care placement).* www.calib.com/nccanch/pubs/factsheets/canstats.cfm.

[26] Mayor's Management Report (2002), *Supra note* 2.

cases, with services being provided more quickly and fewer repeat calls of abuse and neglect on the same family.[27]
The Child Welfare Project, ACS and other organizations are collaborating to reform child protective services by holding conferences to explore "dual track" and through a new Advisory Committee established by ACS to create a stronger foundation for change and propose a structure for a flexible response system. For serious cases of abuse, ACS works jointly with the Police Department, and current assigns 50% of cases to a high risk category.

C. Foster care, adoption and family reunification

ACS performance indicators reveal both positive and negative trends. The foster care population has declined substantially since Fiscal Year (FY) 1998, when there were 40,939 children in foster care. The foster care rolls declined from 30,858 children in FY 2001 to 26,666 as of August 2002.[28] There were 7,147 new admissions to foster care in FY 2002, down from 7,736 in FY 2001.[29]

Even with this decline in foster care, New York's City's rate of one in every 64 children in foster care is nearly double the national rate of one out of every 112 children.[30] In FY 2001, 40% of confirmed cases of abuse and neglect resulted in a removal, compared with the national average of 20%.[31]

Confirmed reports of abuse and neglect occur in foster homes at a rate that exceeds that of the general population. In Fiscal Year 2002, there were 1,485 investigated reports of alleged abuse or neglect in foster care. [32]

New York City lags far behind national standards for achieving adoption and family reunification. The standard of achieving family reunification in 76.2% of cases within 12 months of foster care placement was met in only 43.9% of cases. The standard of achieving adoption in 32% of cases within two years of the child's last foster care placement was met in just 2.1% in cases.[33]

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[27] Institute for Applied Research, *Missouri Child Protection Services Family Assessment and Response Demonstration, Impact Evaluation*, 1998. See www.iarstl.org.

[28] Administration for Children's Services, Office of Management, Development and Research, November 2002. Over 4,000 of these children reside in group or residential care, as opposed to family homes. See Child Welfare Watch, *Supra note* 5.

[29] These figures do not account for those children who are removed from their parents and placed with a relative either informally or through a court order granting them temporary custody. CWP has concerns about the ability of the child welfare system to adequately account for and monitor these cases.

[30] As of September 30, 1999, there were 568,000 children in foster care nationally, the last full year in which national data is available. U.S. Department of Health and Human Services (2002).

[31] Sources: *Child Welfare Watch*, Fall 2002, Mayor's Management Report (2002), National Clearinghouse on Child Abuse and Neglect Information, Children's Bureau-Administration on Children, Youth and Families (April 2002).

[32] Administration for Children's Services, Management Development and Research (2002). Even though approximately one-quarter of the 1,485 reports were indicated (confirmed), the rate of child maltreatment in foster care is greater than in the general population. While there is a likelihood of better reporting for children in foster care, this does not diminish the need for improvements in the training, recruitment and monitoring of foster families.

[33] Administration for Children's Services, November 2002. Statewide figures are comparable: 54.2% for family reunification and 2.95% for adoption. The federal child welfare agency, the Administration for Children and Families, acknowledges that the two-year standard for finalizing adoptions is not realistic in

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The city's performance on these indicators is of particular concern given the passage of the Adoption and Safe Families Act (ASFA) in 1997, a federal law that requires that states more quickly resolve whether children will be returned to their families, or be adopted.[14] ASFA also requires that family court hold permanency hearings every 12 months while the child is in foster care to review the foster care status of the child and appropriateness of the plan for the future.

D. Special Needs of Adolescents

Adolescents comprise a growing percentage of the foster care population. The challenges facing adolescents in foster care are well-documented.[15] Too many young people leave foster care undereducated and unprepared for community living, and as a consequence end up in the criminal justice system. More than half of the young people taken by the police to the city's juvenile detention facilities from July 2000 to June 2001 had been the subject of abuse and neglect investigations by ACS. About one-quarter were either in foster care or had an active preventive service case at the time of detention.[16] The expansion of Person in Need of Supervision (PINS) laws to allow parents to place children as old as 17 in foster care threatens to further strain an overburdened system.[17]

An increasing number of young people in foster care exhibit emotional and behavioral problems.[18] Some of these young people require more structured environments while others can be better served in their communities with intensive services.[19]

E. Poverty and the Economy

Three in ten children in New York City live in poverty. Young children are more likely than any other age group to live in poverty, and poverty in the early years has the greatest impact on future achievement.[40] The stressors of poverty not only pose problems for children's health, but pose

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New York State, given the required time frames for conducting permanency and termination of parental rights hearings in Family Court. Advocates and government agencies also express concern that a rush to adoption, in some cases, may not be in children's best interests.

[14] Public Law 105-89, January 1997. The New York State version of the law was passed in 1999.

[15] Child Welfare Watch, *Supra note* 4. Also see other New York City studies by the Vera Institute for Justice www.vera.org, Youth Advocacy Center www.youthadvocacycenter.org, Advocates for Children www.advocatesforchildren.org, and Citizens Committee for Children www.kfny.org.

[16] Child Welfare Watch, *Supra* note 5.

[17] The New York Times, *Supra note* 13.

[18] Many children in foster care need mental health services, but do not receive them. See Shawn Cohen and Leah Rae, The Journal News, *Mental Health Care Lacking for Traumatized Kids*, October 28, 2002 (discussing a report by OCFS that recommended increasing Medicaid payments to foster care agencies, among other measures, to serve thousands of foster children in need of services) www.thejournalnews.com/rtc_02.htm.

[19] ACS and advocates are seeking ways to rely less on residential foster care, and more on therapeutic foster homes, in which mental health services are provided to children residing with specially-trained foster parents. Some children could also be discharged home to their parents, if appropriate mental health services were more available. For more information, see, for example, Citizens Committee for Children, *Before It's Too Late: Ending the Crisis in Children's Mental Health* (2000), www.kfny.org

[40] National Center for Children in Poverty, *Policies Affecting New York City's Low-Income Families*, (October 2001); and *Policies That Improve Family Income Matter for Children* (April 2002). www.nccp.or

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increased risks of exposure to neglect, abuse, violence and trauma.[41] ACS Commissioner Bell points out, 70% of the children in foster care come from the poorest 17 community districts, and those neighborhoods with the highest infant mortality rates are the same ones with the highest rates of children in foster care.[42]

It is clear that increasing poverty and a fraying safety net will put greater demands on the child welfare system. It is equally clear that the Administration for Children's Services alone cannot assist these families. Other social and health service delivery systems and communities must also play a role in protecting children and strengthening families. Over the past several years, the city has seen increased demands for emergency shelter and food, which has only intensified due to recent losses of jobs and income.[43]

With the City's economic downturn and the specter of another round of budget cuts, there is cause for alarm about the impact on already stretched service delivery systems and the struggling families who depend upon them. ACS, in addition to facing cutbacks, is further challenged by a hiring freeze and the loss of experienced staff due to buyouts.

F. Costs of Child Abuse and Neglect

It is well established that abused and neglected children are over-represented in the juvenile and criminal justice systems, and are more likely to experience developmental delays, health problems and emotional difficulties.

The national organization Prevent Child Abuse America has estimated the total costs resulting from child abuse and neglect. They found that annual direct costs total over $24 billion while indirect costs total approximately $70 billion. Direct costs include child welfare system expenditures ($14.4 billion), hospitalization ($6.2 billion) and the judicial system ($341 million). Indirect costs include adult criminality ($55.3 billion), juvenile delinquency ($8.8 billion), and mental health and health care ($4.6 billion). [44] While estimating the total financial costs at $94 billion annually, they further note the incalculable costs of human suffering, and the reality that abused and neglected children are more likely to suffer from depression, alcoholism, drug abuse, severe obesity and require special education in school.

G. Gaps in Parenting Education

A recent survey of adults and parents found a high frequency of misinformation about child development despite the growing body of knowledge in the scientific community. For example

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[41] National Center for Children in Poverty, Columbia University. *Early Childhood Poverty: A Statistical Profile*, (March 2002); Center for Law and Social Policy, Washington, DC (February 2002).

[42] Introductory remarks at the Agenda for Children Tomorrow (ACT) meeting held on October 28, 2002 at the Federation of Protestant Welfare Agencies.

[43] See for example, recent reports by the New York City Coalition Against Hunger www.nyccah.org.

[44] Suzette Fromm, Prevent Child Abuse America, *Total Estimated Cost of Child Abuse and Neglect in the United States* (2001). Note: Indirect costs related to adult criminality are based on the National Institute of Justice estimates that 13% of all violent crime can be linked to earlier child maltreatment. For further information see T. Miller, M. Chen & Wierseman (1996),*Victims and Costs: A New Look*. www.nij.com For juvenile delinquency, the National Institute of Justice finds that 26% of children who are abused or neglected become delinquents, compared to 17% of children as a whole. See Widom, *The Cycle of Violence*. (2000). *Available* on-line at www.nij.com

over half the adult respondents believe that corporal punishment is appropriate with young children and that you can spoil crying infants by holding them.[45] Few resources in New York City for parenting adolescents even exist. A 2001 report by the New York City Comptroller's office concluded that expanding parenting education programs are cost-effective and would help to reduce child maltreatment and promote positive outcomes.[46]

The city's growing immigrant population increases the demand for parent education. Service providers indicate that there is a lack of awareness among some immigrants about the city's child welfare standards and how child maltreatment is defined—which might strongly clash with the guidelines in their nation of origin.[47]

The gaps in knowledge particularly affect families already caught up in the child welfare system. Most parents with children in foster care are required to complete a "parenting skills" class in order to be eligible for their children to return home. In 2001, ACS and several other agencies, including the Child Welfare Project, surveyed parents about their experiences with parenting skills classes.[48] Interviews were also conducted with caseworkers and parenting education experts. Among the identified concerns were the lack of information about available classes and referrals made without anyone identifying family needs or establishing goals. In addition, culture and language issues are not always addressed. For example, according to the statewide parent helpline, there are no parenting education classes in the Bronx that are taught in Spanish.

H. Preventive Services

One in four New York City children (approximately 450,000) has been involved in the child welfare system.[49] Prevent Child Abuse New York estimates that New York State spends billions of dollars treating the consequences of child abuse and neglect. Although New York is increasing its investments in preventive services from a variety of funding streams, the only state fund specifically for up-front prevention is the Children and Family Trust Fund, which this year received a state appropriation of just $1.2 million.[50]

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[45] "What Grown-Ups Understand About Child Development: A National Benchmark Survey," sponsored by Civitas, Zero-To-Three and the Brio Corporation (2000). www.zerotothree.org.

[46] City of New York, Office of the Comptroller, *Building Foundations, Supporting Parental Involvement in a Child's First Years*, April 2001.

[47] See for example, Coalition of Asian-American Children and Families, *Crossing the Divide, Asian American Families and the Child Welfare System*, 2001, www.cacf.org and The Committee for Hispanic Children and Families, Inc. www.chcfinc.org. *Building a Better Future for Latino Families*, 2001 (discussing the need for more cultural sensitivity and competence with respect to immigrant families). For information on special child welfare initiatives, contact the Immigrants and Child Welfare Project, based at the National Resource Center for Foster Care and Permanency Planning, at the Hunter College School of Social Work, Ilse Earner, Director (212) 452-7435.

[48] Administration for Children's Services, *Parenting Education Project Report ,Final Draft* (June 2002).

[49] Administration for Children's Services, *Supra note* 4.

[50] Prevent Child Abuse New York, *The Costs of Child Abuse and the Urgent Need for Prevention* (2002) www.preventchildabuseny.org. Tens of millions of dollars are invested in preventative services by the city, state and federal funds, including TANF surplus funds (monies saved from reductions in the welfare rolls) and Federal Title XX funds. Discussions with state officials and advocates reveal concern that TANF funds will end at the end of the current fiscal year, and the continuation of these programs will depend on the availability of these funds.

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While there has been a recent increase in the number of families served by contract agencies that provide preventive services, many of these referrals come at a crisis point when foster care placement is likely.[51] ACS spends $118 million on prevention, but nearly $800 million on foster care—seven times as much, although ACS is now serving as many children through preventive services programs as it does in foster care.[52] Agencies providing prevention services report that the current fiscal structure limits flexibility in providing specific community-based services to families, and a lack of parity in salaries with ACS and even foster care caseworkers.[53]

Between 1997 and 1999 New York State forfeited $33 million in federal funds for prevention, due to the failing to meet the requirements designed to ensure adequately investment in preventing foster care placement or shortening stays for children.[54] While New York State, through its Office of Children and Family Services (OCFS), has been compensating for these losses in funding, largely through TANF surplus dollars, there is no guarantee that these funds will be available for the next fiscal year that begins April 1, 2003. The hopeful news is that this past year the state uncapped funding for preventive services, which means that localities will be reimbursed even if they exceed the budget allocation.

In 2000, the average cost per family was $2,800, compared with at least $14,000 per year in foster care costs. Traditional foster care prevention programs are similarly cost-effective, and make good fiscal sense. Due to matching formulas approved by the state this year, for every 35 cents New York City spends on prevention, the state contributes 65 cents.

National and local data demonstrate the numerous benefits of prevention. Findings from evaluations of the Healthy Families home visiting program, which currently has 28 sites in New York State, reveal dramatic outcomes. Compared to a research control group, home visited children were significantly more responsive to their mothers at one year of age, and mother's problems with social isolation, domestic violence, and substance abuse were significantly improved.[55]

A study that followed 189 families for 30 months by The Center for Family Life in the Brooklyn's Sunset Park found that almost all (98.6%) of the 423 children remained with their families.[56] The study concluded that at risk families, particularly those coping with the stressors of poverty, benefit from comprehensive preventive and family support services over time.[57]

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[51] Referrals by ACS to preventive services increased by 17% from FY 00 to FY 01, and this trend is reportedly continuing. Even though any agency may refer a family for these services (or families may refer themselves), 51% of the referrals came from ACS.

[52] It costs government approximately $14,000 to keep a child in foster care per year, while preventive services costs are between $2,000 - $3,000 per family. Residential foster care is much more costly, with expenses per child ran run over $100,000 per year. See Shawn Cohen and Leah Rae, The Journal News, *Supra Note* 38.

[53] Neighborhood Family Services Coalition, 2002. For further explanation of these issues see www.nfscpnyc.org/preventive_recs.htm.

[54] New York State Assembly, *Losing Our Children: An Examination of New York's Foster Care System* (1999), at 7. http://assembly.state.ny.us/Reports/chil/199905/. New York State has not adequately spent Federal Title IVB, part 2, dollars, which is targeted for prevention and family support.

[55] Prevent Child Abuse New York State, www.preventchildabuseny.org/advocacy.htm.

[56] Peg McCarrt Hess, Brenda McGowan and Michael Botso, *A Preventive Service Program Model for Preserving and Supporting Families Over Time*, Child Welfare, Child Welfare League of America, Vol. LXXLX #3 May/June 2000, at 224.

[57] Ibid.

According to the city and many experts, over half of all cases of child maltreatment involve substance abuse. A service model called the Family Rehabilitation Program (FRP) combines treatment for addicts with preventive services. A comprehensive study completed in 1999 demonstrated the cost-effectiveness of this approach and positive outcomes for families.[58] Over the past year, ACS has increased the number of referrals to these programs.
A comprehensive 1998 evaluation of the Prenatal/Early Infancy Project in Elmira, New York, found that the net savings to the government exceeded $18,000 per child from birth until the age of 15. The report by the RAND Corporation concluded that early childhood programs that include parenting education can improve the quality of life for children, parents and society.[59]

I. Family Court

Family Court holds jurisdiction over child abuse and neglect cases. Criminal proceedings can also be initiated against caregivers of children in Criminal Court. While handling cases of neglect and abuse are an immense challenge, Family Court is also responsible for many other kinds of cases including juvenile delinquency, Persons in Need of Supervision (PINS), custody and visitation, and family offense (including domestic violence). No additional Family Court judges have been appointed over the past decade, despite the reality that court filings have increased.[60]

There are many different types of proceedings involved in child abuse and neglect cases. These include fact-finding hearings to determine whether or not the accused perpetrator committed acts of abuse or neglect; and dispositional hearings to decide whether the child should be returned home or remain in foster care or other suitable placement.

When ACS decides that the safety of the child can be protected only by involuntarily removing the child from the home, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the initiating of proceedings to protect the caretaker's rights. Therefore, there are proceedings that parents can request immediately after removal to seek the return of their children. Parents have the right to be represented by counsel, and in New York State, parents who cannot afford to hire a lawyer may be appointed a free attorney by Family Court.

Due to the crisis in legal representation for the indigent (caused largely by inadequate compensation: since 1986 fees have been $40 per hour for in-court time and $25 per hour for out-of-court time), there is a consensus that the due process rights of parents are compromised.

J. Pending Federal Review

Next year, the federal government, which funds approximately 50 percent of the child welfare system, will conduct an eligibility review to determine NYC's eligibility to receive federal funds for foster care. For example, cases will be examined to see if there are court orders confirming reasonable efforts to preserve the family, when it is safe to do so, and finalizing permanency plans

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[58] Steven Magura, Alexandre Loudet, Sung-Weon Kang and Shirley Whitney, *Effectiveness of Comprehensive Services for Crack-Dependent Mothers and Their Children*, Journal of Psychoactive Drugs, Vol. 3(4), October-December 1999.
[59] City of New York, Office of the Comptroller, *Supra note* 46 (citing various successful programs).
[60] Conversations with officials of the New York State Unified Court System. The State Legislature would need to amend the Family Court Act (State Law) to increase the number of judges.

for children. Millions of dollars are at stake, as the federal government could eventually sanction the State for non-compliance.[61]

[61] Initial audits are followed by performance improvement plans, which, if not successfully implemented, could lead to financial sanctions.

2. Review of Child Fatality Reports 2001

The New York State Office of Children and Family Services (OCFS), in accordance with state law, prepares a fatality report for each child who died while in custody of ACS or whose death was reported as having been caused by suspected neglect or abuse.[62] Of the 79 New York City child fatalities reported on by OCFS for the year 2001, 52 of the children who died were from families known to the child welfare system.[63] We confine our discussion to the group of 52 cases.

Each OCFS review examines ACS case records and the actions and decisions of its caseworkers and supervisors in order to assess their compliance with law and regulations, as well as their soundness and appropriateness. Depending on the circumstances, OCFS reviews other relevant documents including contract agency case records, the autopsy report, medical records, and prior reports of suspected neglect or abuse. In nearly all the cases, a determination is made about the cause of death.

Despite the reorganization of the child welfare system and noted improvements in the quality of front-line casework, child fatalities have continued to rise, particularly since 1999. As fatalities tend to rise and fall over time, the critical focus must be on how ACS and other concerned agencies can work together to reduce avoidable deaths, as well as prevent abuse and neglect. This analysis should not be used to judge or characterize the child welfare system as a whole, or point the finger of blame at the city or its contract agencies.

TABLE I – Child Fatality Statistics by Year

Year	Total Number of Reported Child Fatalities[64]	Children Known to the System
1996	59	24
1997	73	30
1998	76	36
1999	57	23
2000	77	48
2001	80	52

[62] The Public Advocate receives a copy of each report from OCFS, as the presiding officer of the New York City Council, *Supra note* 1.

[63] A family is considered "known" if it meets one of the following criteria: a) an adult in the family had been the subject of an "indicated" or "unfounded" allegation of child maltreatment to the SCR before the fatality occurred; b) ACS was investigating an allegation against an adult in the family when the fatality occurred; or c) a family member was receiving foster care or preventive services, when the fatality occurred. Administration for Children's Services, *Accountability Review Panel Report 1999*.

[64] These numbers reflected the number of children in reports completed by the New York State Office of Children and Family Services. OCFS only completes reports on children from families known to the child welfare system, or cases in which child abuse or neglect was suspected as a cause in the death of a child, in which a report was made to the New York State Central Register.

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Findings

a. Some deaths are avoidable.

Our analysis reveals that 21 to 26 of the 52 fatalities reviewed could have been avoided by better monitoring or appropriate interventions.[65] About half of these children were living in a foster home, the remainder resided with their families. Thirteen of these children were aged three or younger, and nine were one year or younger. Below are some of the themes that emerged.

Inadequate Monitoring of Foster Homes

Eleven children died in foster homes due to negligent monitoring or service provision. In fiscal year 2002 ACS's Office of Confidential Investigations (OCI) investigated 1,485 reports of abuse and neglect for the 24,000 children in foster family homes.[66] The following case shows how unsafe conditions in foster care homes can go undetected.

Case Example [67]

> Three foster children ages six, nine and ten, died in a fire in their foster home. While the cause of death was officially deemed accidental, the report indicated that the foster home was re-authorized by the contract agency despite the absence of a working smoke detector and window guards. A fire marshal found the home to be cluttered and to contain fire hazards.
>
> According to the case documentation, four of the five children placed in the foster mother's home (two children survived the fire) were classified as exceptional and special needs children. Foster care agency records reflected that the foster mother completed two six-hour training sessions in the year 2000. OCFS stated that this was inadequate given the complex needs of the children. ACS's follow-up investigation revealed that several school staff had noted that several of the children came to school unkempt or dirty. The report further indicated that the agency caseworker had visited the home just prior to the fire but failed to address the presence of clutter and flammable materials in the hallway.

Other deaths of foster children include two teenagers who were AWOL: one was murdered in a drug-related shooting – he was not enrolled in school or any regular activity; the other youth committed suicide after the foster care agency failed to arrange for him to be removed from his sister's home. There was also a nine-month old infant who died from suffocation in a broken crib and a seven-week old infant who was killed by her teenage mother who was living in a poorly supervised foster home.

Inadequate Interventions with Families

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[65] Non-preventable deaths include those where the child (often in foster care) suffers from a terminal illness.
[66] Mayor's Management Report (MMR), October, 2002, and ACS, Management, Development and Research, November 2002.
[67] OCFS Fatality Report No. 95-01-061 (May 15, 2002).

In 10 cases families were receiving services or being investigated at home prior to the death of the child, yet there was insufficient monitoring and follow-up. High-risk families with long histories of involvement with the child welfare system require more assessment and intervention. This is illustrated by the following case:

Case Example [68]

> A three-year-old girl died of child abuse. The child had lip lacerations; evidence of force feeding of soap; malnutrition; abrasions and contusions of the head, torso and extremities; and a fracture of the left femur. The family was known to ACS since 1997.
>
> Between 1998 and 2000 the children were placed in foster care following a report that one of the child's siblings, then 16 months old, had unexplained bruises all over her face. There were also several incidents involving domestic violence when the police were called to the home. In March 2000 the children were returned home on condition that the parents participate in preventive services.
>
> In August 2001, three months prior to the child's death, ACS received a report that the child had bruises on her face, under her eye and near the temple. Four days later, ACS documented that the child sustained a fractured femur, when, according to her parents, she fell from the bunk bed. The Child Protective Specialist also observed a bite mark on one of the siblings and observed another sibling's jaw peeled raw, which the parents said resulted from the child picking her face. The parents' explanations for the children's injuries were accepted.
>
> The family continued to receive preventive and homemaking services up until September 2001, when the service provider submitted a plan amendment to ACS indicating that the counseling services for the family ended at the parents' request. The service provider documented its concerns about unexplained bruises on the now deceased child, and recommended that the child be clinically evaluated. There was no indication in the case record that ACS followed up on the preventive agency's concerns or recommendations.
>
> OCFS found that ACS unsubstantiated the August report without consulting the physician or medical expert regarding the child's bruises or fractured femur. The case record did not indicate that the various service providers ever met to discuss the assessment of the family and their needs.

Other fatalities include: a 17-year-old boy who was stabbed to death by his father – the family had been known to the system since 1995 and there had been six indicated reports, many involving domestic violence; and a nine-month old infant who died from head trauma (shaken baby syndrome) after ACS closed the case with no services for the family

b. Infants and Very Young Children are Especially Vulnerable.

[68] OCFS Fatality Report No. 95-01-051 (April 11, 2002).

Very young children are especially vulnerable. Thirty of the fifty-two known children were aged three or younger, with twenty aged one or younger. The reports revealed that deaths can be prevented by better adult supervision and safety precautions (in both foster care and family homes), keeping doctor's appointments, and knowledge of appropriate handling and sleeping positions for infants.

Case Example [69]

A three-month-old died in a foster home due to positional asphyxia. The child apparently rolled onto a soft pillow that was in the crib, and died as a result of sleeping face down on the pillow. The Medical Examiner indicated that substantial information is available concerning optimum sleeping positions for infants to reduce the risks of accidental death and sudden infant death syndrome (SIDS). OCFS also found no indication that the foster mother had kept a routine period physical medical appointment for the child even though the infant had been hospitalized several weeks earlier due to high fever.

Some families need intensive services but do not receive them. The following case illustrates how the inability to identify underlying issues can cause caseworkers to miss warning signs.

Case Example [70]

A two-year old girl, with two siblings, died as a result of blunt impacts to the torso and related physical injuries that appeared to have been inflicted by the girl's four-year old brother. The family had been receiving services from a preventive service agency from May 2000 up until the child's death in October 2001. The family had been known to the child welfare system since 1988, including six separate reports to the SCR, with the most recent one in February, 2001. This report included allegations that the now deceased child had bruises all over her body, as well as animal bites and scratches. It was unclear from the latest report whether the mother or a sibling was hurting the child. In addition, the SCR narrative revealed that the four-year-old sibling had vision problems, but it was believed he was not being taken to the doctor. The narrative further stated that the parents had a history of drug abuse and although they were supposedly in a drug program they may have been using drugs.

ACS made four home visits over the following months and assessed that the three children were safe. ACS documented that the mother cooperated with preventive services, attended her methadone program and family counseling with the children, and had completed parenting skills classes. The children also appeared to be healthy with no observable marks or bruises. However, preventive service agency case records dated 5/9/01 and 11/9/01 reflected that the three children were unsafe with the mother and had a moderately low risk rating of future abuse and maltreatment of the child. The case record also revealed that the mother had difficulty disciplining the children.

[69] OCFS Fatality Report No. 97-01-011 (October 23, 2001).
[70] OCFS Fatality Report No. 95-01-051 (April 11, 2002).

> In its later review, OCFS found that the case record lacked an assessment of why the three children were unsafe and also did not address the interactions between the siblings. OCFS found that ACS did not adequately monitor the preventive services provided to the family. The mother had in fact requested assistance with disciplining her children but neither ACS nor preventive service agency documented any activities toward this goal. Two weeks after the death of the child a detective interviewed a surviving sibling who stated that when the fatal incident occurred he was playing "beat up policeman" and that he was arresting his sister and beating her up. Interviews with other relatives revealed that the four- year- old was jealous of his younger sister and played roughly with her.

Other fatalities involving young children involved deaths that could be termed accidents on one hand, but could have been avoided by using safety precautions. These include several children who drowned because they were left unsupervised in the bathtub, suffocated due to sleeping in their parents' bed, and Sudden Infant Death Syndrome (SIDS).

Analysis

Child protective investigations in fatality cases require a great deal of child protective staff: forensic inquiries, risk assessments, safety interventions and helping families with the bereavement process. In some ways, there has been real progress. For instance, we noted improvements in supervisory involvement, and in the diligence of Child Protective Service specialists in obtaining information and services needed by the family. In a number of cases, ACS workers uncovered negligence on the part of contract agencies. These include supervising foster homes or monitoring families receiving preventive services.

Although ACS reports that the official caseloads of child protective specialists have decreased, a confluence of factors may jeopardize the quality of investigations and services provided to children and families. These include the burden of paperwork, time spent on home visits and in court, and additional case conferences. When staff spend an entire day in court, they have lost time that could have been spent on other cases.

In theory, when children are placed in foster care, the CPS can transfer the case to another part of the agency that monitors the casework being done by the contract foster care agency. However, CPS may have responsibilities until family court completes the fact-finding, which may take seven months or much longer. CPS staff are usually needed to testify in court or perform duties related to the monitoring of the case. Sometimes children are returned home pending the court's decision on whether neglect or abuse occurred, requiring CPS staff to supervise the home and arrange services. All the while, they are required to pick up new cases each month.

In many of the reports, OCFS found violations of regulations governing child welfare practices on the part of ACS and contract agencies. The most common violation was the delay in the completion of the reports. There is also a pattern of lack of attention to medical issues as evidenced by a failure to speak with medical professionals to determine critical factors in the death of a child. For example, in one case involving a 7-year-old-boy who suffered from heart and lung problems, OCFS found that "ACS failed to obtain relevant medical information that could have verified that the parents provided appropriate medical care for the child. ACS failed to focus on the medical aspects of the case."[71]

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[71] OCFS Fatality Report 95-01-021 (October 19, 2001).

In other cases there were inappropriate or incomplete safety assessments and decisions to remove surviving children. In one case in which a five-week old infant died from meningitis, the ACS case record noted that, following the death of the child, the father fled the police by descending the fire escape holding the two-year-old surviving sibling. There was no documentation of whether this incident was addressed. In other cases, ACS removed surviving siblings or left them in the home without actually determining if these children were unsafe.

ACS's Accountability Review Panel is in the process of completing its own review of fatalities that occurred in 2000 and 2001. We anticipate that this report will include insights and recommendations regarding the improvement of assessments and investigations.

We must also note that these fatality reports actually cover a small percentage of child deaths that occur in New York City. According to the New York State Department of Health, about 1,400 children died during the year 2000.[72] The only fatalities that are currently reviewed are those in which the families were known to the child welfare system or an official report was made suspecting abuse or neglect as a cause of death. On the basis of these cases alone, New York City's fatality rate for child abuse and neglect exceeds the estimated national average of 1.71 children per 100,000 children in the population. [73]

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[72] New York State Department of Health, *Vital Statistics of New York State 2000.* www.health.state.ny.us/nysdoh/vital_statistics. The NYC Department of Health reports that 839 infants died prior to their first birthday in the year 2000. Although the rate of 6.7 infant deaths per 1,000 live births was the lowest ever in the City's history, the Department of Health expressed concerns about large disparities in infant mortality between city neighborhoods. See New York City Department of Health, Press Release, *City Department of health Releases Summary of Vital Statistics 2000*, April 18, 2002 (212) 295-5335/5336. For information about strategies to reduce infant mortality, contact the Citywide Coalition to End Infant Mortality (212) 665-2600 x347.

[73] Based on New York City's population of 1.8 million children, approximately 31 child deaths from abuse and neglect would equal the national average of 1.71 per 1,000 children. Based on our analysis, there were approximately 40 deaths associated with abuse and neglect in the year 2001. U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *National Child Abuse and Neglect Data System (NCANDS), Summary of Key Findings from Calendar Year 2000.* www.calib.com/nccanch/pubs/factsheets/canstats.cfm

3. Review of Child Welfare Project Cases

The Child Welfare Project's extensive contact with ACS, contract foster care agency caseworkers and supervisors, and in-court observations has given us a unique view of the deficiencies and strengths of the system. Nearly 80% of our complainants are parents who have experienced difficulty with child protective services or contract foster care agencies. We recognize even with the problems discussed in the report, there are excellent, hard working caseworkers and agencies that provide quality services.

The Child Welfare Project continues to receive 50-70 new requests for assistance every month. A close review of over 200 cases we have handled in 2002 reveals the most common kinds of complaints relate to the quality of services, especially:

- Significant communication problems between the stakeholders, usually the parent and either the ACS or contract agency caseworker;
- Delays in services needed to facilitate family reunification, or services required to help a child at home; and
- The frequency of parent-child visits and quality of parents' involvement in their children's lives while they are in foster care.
- Parents' concerns about the safety of their children in foster care and their desire to have the child moved from a non-kinship foster home to the home of a relative.

Prior to Child Welfare Project involvement, parents have little knowledge of their rights and responsibilities while their children are in foster care; some do not understand that their rights as a parent can be terminated for not meeting the requirements imposed on them by child welfare agencies and family court. The CWP often helps parents by clarifying what they must do to regain custody of their children. This necessitates speaking with caseworkers and supervisors, or by attending a case conference.

Typically, requirements include completing a parenting skills class, visiting their children regularly, making progress in drug treatment, and /or counseling and mental health services.

Findings

The system is overwhelmed, creating too many demands on service providers and family court.

Families Seeking Reunification Do Not Get Enough Support

In order to make swift progress toward safely reunifying families, caseworkers have a diversity of tasks. They have to engage the parents, refer them to services they need, monitor the child's adjustment to foster care, supervise visits with parents, and arrange for sibling visits. Only half of the parents with goal of having their children returned attend critical service plan meetings that are

held every six months.[74] Parents and children with supervised visiting plans may only spend 4-8 hours a month together.

Average foster care caseloads in New York City remain 23 to 25—double the recommended national standard.[75] Each foster care case demands of the worker interact with the children, the foster family and the birth parents. This can easily mean 10 individuals per case. Low pay and difficulty of the work contribute to high caseworker turnover, which hovers around 40% annually at some contract agencies. The current financing scheme makes it difficult for agencies to budget, and they do not get reimbursed for all of their expenses.[76] At the same time, ACS has increased the demands on caseworkers, e.g. requiring more frequent case conferences with families.[77] In addition, the Adoption and Safe Families Act (ASFA) requires more paperwork and planning.[78]

Federal law also requires concurrent planning – meaning that caseworkers must explore adoption as an alternative plan to family reunification. Faced with these pressures, some workers will invest much greater time and energy in helping children bond and stabilize in their foster homes than fully engaging the parents. Exacerbating these dynamics is what New York City's Ackerman Institute for the Family calls "patterns that disconnect."

> Of every ten children who entered foster care in 1998, six are still there. While the children's parents are granted a compulsory "leave of absence" from parenting and encouraged to talk to workers about their compliance with mandated services, they become further disengaged from their children. Disconnection begets disaffection; every week of non-parenting erodes a parent's sense of competence, responsibility, awareness of his or her child's developing needs, and ultimately diminishes a parent's motivation to resume parenting. This disaffection usually prompts judges to indefinitely delay the reunification of parents and children. Thus many children remain in protracted limbo, prevented both from reuniting with their biological family and from forming a permanent bond with a new family.[79]

At CWP, we note the frustration and pain experienced by parents as they experience the effects of being under-involved in their children's lives. In the following case, a mother's chronic illness

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[74] Mayor's Management Report (2002), *supra note 3*. More research is needed to identify the reasons for lack of parent participation in service plan meetings and court hearings. A top priority of ACS's continued work with the Special Child Welfare Advisory Panel (a group of experts from New York City and around the country) will be to improve parent engagement. *Supra note* 22.

[75] Child Welfare League of America, www.cwla.org.

[76] Agencies get different re-imbursement rates based on their expenses from two years prior to the current one. For more details about this problem, consult the Council on Family and Child Caring Agencies (COFCCA), www.cofcca.org.

[77] An ongoing goal of the child welfare system is involving families in the decision-making process throughout the child welfare case. Elevated risk conferences (held prior to making a decision to remove a child), child safety conferences (held 72 hours after a removal), and other conferences held at 30- and 60-day as well as six months intervals, in theory provide ample opportunities for productive family participation in planning for their children, as part of a team with the professionals involved.

[78] ASFA, *supra note 34*. For more information on the financial challenges facing contract foster care agencies, see reports and testimony by the Council on Family and Child Caring Agencies, www.cofcca.org.

[79] The Foster Care Project, Ackerman Institute for the Family, Jorge Colapinto, Director. ACS awarded the Ackerman Institute a three year contract in the fall of 2000 to provide training to a small group of foster care agencies with the goal of providing a new model for foster care that promotes more effective engagement with parents and more meaningful connections between parents and their children. http://www.ackerman.org/foster.htm

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and depression were impeding her progress toward reuniting with her children. Three different caseworkers had been unable to clarify what her obligations were until the Child Welfare Project intervened.

Case Example

A mother approached CWP for assistance because her two children were in foster care and she was having difficulty communicating with the agency. As a result, she was unclear about the progress of her case and what was expected of her. The children had been placed one year earlier on a charge of neglect due to unsanitary conditions in her home. A victim of lupus, she was also suffering from depression due to her health condition and the recent abandonment by the children's father. Our initial involvement pertained to the mother's difficulty in accessing a parenting skills class. She also felt that the agency was not providing the support she needed to improve her situation.

During her involvement with the agency, she had three different caseworkers due to staff turnover. CWP staff attended three service plan reviews with the mother, and we were able to clarify the requirements. CWP referred the mother to a parenting skills class. By maintaining ongoing contact with the mother and agency, CWP was able to hold the agency accountable for moving the case along, in accordance with the agreed-upon reunification plan. The children were returned home on a trial discharge in August, 2002, with homemaker services in place. CWP also had to ensure that the agency issued a timely discharge grant.

The following case demonstrates the lack of the system's urgency to resolve problems and address critical family needs:

Case Example

A mother and father contacted the CWP because their newborn twins were removed by ACS following a report that the parents were engaging in domestic violence. The parents maintained that the charges stemmed from a false complaint from the grandmother because they were relocating out of state. To facilitate visiting and eventual reunification, the parents had requested an interstate compact so that a kinship resource in their new home city could be explored. The parents continued to travel back and forth for their visits and for court. When CWP checked the status of the interstate compact application, a caseworker from the contract agency admitted that she had never sent the application to Albany. The parents and CWP had been told that the application was sent. In addition, there were repeated problems related to carfare reimbursement and coordination of the visits. The parents did not qualify for court-appointed representation because of their income, but could not afford to hire an attorney. Meanwhile, their cases were separated by Family Court, requiring two separate fact-finding proceedings. The mother, representing herself ("pro se"), won her case in court. Given the fact that her children had already been in foster care for one year, the mother decided to move back to New York without her husband. It took the foster care agency weeks to arrange regular visits once the mother returned.

Parents sometimes report that after completing an initial set of requirements, which typically include a parenting skills class and counseling, they are given additional service referrals. As the following example illustrates, sometimes this occurs without explanation or accurate information.

Case Example

A mother of three children, ages 3, 7 and 12 contacted CWP in February 2002 for help with reunifying her family. The children had been removed back in November 2001, due to her using a belt to discipline her children. After seven months had passed, the mother earned unsupervised visits with her children on Sundays, as she had completed her requirements that included parenting classes, individual and family therapy. Then in September 2002, the mother was told that she had to complete a domestic violence program, but it was not made clear to the mother why this was necessary, as she was not involved in an abusive relationship.

In October 2002, the mother contacted CWP expressing frustration that she had not been able to contact her caseworker at the foster care agency, who was supposed to have made the referral to the domestic violence program. When CWP called the agency, the caseworker subsequently contacted the mother, and gave her the name of the agency that could provide the services, but no phone number or contact person to call. When the agency in question was contacted, the mother was informed that they did not have a domestic violence program.

As the following case example illustrates, delays also impact the lives of families planning to adopt children:

Case Example

A pre-adoptive mother of two children contacted CWP because her children had been freed for adoption for one year and 19 months respectively, but the adoptions had not yet been finalized. The family had been misinformed by the contract agency caseworker about the timing of the adoption. As a result, they had already secured housing out of state and were prepared to move and enroll the children in school. Upon learning that they could not leave the state (without a formal transfer of the case, which takes many months), they were faced with the financial burden of maintaining two homes. They received no clear information from the agency regarding the cause of the delay.

CWP contacted the law guardian for one of the children. Upon investigation, the attorney learned that ACS failed to file for a third party review in family court, which should have occurred one year after the child had been freed. As a consequence, the case was filed away and off her radar screen. She proceeded to call the foster care agency to urge them to complete the paperwork – she was mystified as to why it was taking so long.

Family Court delays and the inadequacy of the assigned counsel system contribute to longer foster care stays.

Many people who contact our office are either seeking an attorney, or wish that they had an attorney who could provide them with more aggressive representation. As we documented in our report *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings* (May 2000) the system of legal representation for indigent parents accused of neglect or abuse is inadequate and "neither protects the rights of parents nor serves the best interests of children. It denies parents due process, profoundly disrupts family life, and leads to inappropriately lengthy and costly foster care stays for children."[80] With the failure of the State to raise the reimbursement rates (which have been frozen since 1986) for court-appointed attorneys, the number of available lawyers has continued to dwindle, especially in Manhattan, resulting in impossibly high caseloads.[81]

It takes on average six to eight months to determine whether the parent is guilty or innocent of neglect or abuse) -- often longer in complex cases. Contributing to family court delays are the absence of attorneys, unprepared case workers and lawyers, and incomplete court-ordered services and reports.[82] Some parents and advocates find the court fails to consistently enforce standards of reasonable efforts to assist the family in remaining a unit and free of unnecessary state intervention.[83] On the other hand, judges and attorneys are not always confident that ACS and contract agency caseworkers have made an accurate assessment. This understandably contributes to cautious decision-making and delays.

As in the following example, families frequently report frustration when their cases are adjourned or they see no progress in the resolution of the problem:

Case Example

An immigrant mother from West Africa contacted our office recently because her two young children (one of whom she was breast feeding) were removed in March 2002 and the fact-finding on the case hasn't been completed yet. Meanwhile, she had already completed a parenting skills class, even though it had not been established that she did anything wrong. While seven months is a normal time frame for completing a fact-finding

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[80] Report by The Child Welfare Project (then called C-PLAN) and the Office of the Public Advocate. Available by calling 212-669-4955.

[81] See also, *Report of the Appellate Division First Department Committee on Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*, March 2001. There are several lawsuits that have addressed the inadequacy of assigned counsel, including Nicholson v. Williams (under appeal), in which the judge's ruling now permits higher fees for domestic violence cases, and the New York County Lawyers Association suit against the State of New York, which seeks an across the board increase.

[82] See for example, the reports of The Special Child Welfare Advisory Panel. www.aecf.org.

[83] These requirements have been incorporated into federal law through the Adoption Assistance and Child Welfare Act of 1980 and the Adoption and Safe Families Act of 1997 (ASFA). For further discussion see Jane M. Spinak, *Adding Value to Families: The Potential of Model Family Courts*, Wisconsin Law Review, Symposium Volume 2002, Number 2, and The Youth Law Center, *Making Reasonable Efforts – A Permanent Home for Every Child*, San Francisco, 2000. (415) 543-3379. Jane Spinak's article addresses the need for Family Court to more strongly value the integrity of families.

on an abuse and neglect case, from the mother's perspective, the time has seemed like an eternity.

Some cases can drag on for years without resolution:

Case Example

A state elected official's office contacted CWP, requesting assistance for a constituent whose seven children had been in foster care for 2 ½ years. According to the office, the children had been placed in care because one of them had been sexually abused by a friend of the mother's who was now incarcerated. At the time, the mother was recovering from cancer, and she had asked her friend to assist her with the children. Family court and ACS are reportedly still trying to establish whether or not there should be a finding of neglect against the mother.

The overloading of the court system is being addressed by New York State's Unified Court system, headed by Judge Judith Kaye, in cooperation with the Office of Court Administration, Center for Court Innovation and New York City Administrative Judge Joseph Lauria. A number of judges have been empowered with additional staff and resources to monitor cases effectively, frontload services, and reduce the amount of time between court proceedings.[84] These efforts have shown promise and deserve support to expand them system-wide.

Analysis

The effect of high caseloads and staff turnover on children and families is profound. Judges and attorneys may order foster care agencies to provide services, but these orders are often not followed in a timely manner. Turnover disrupts continuity of services: new caseworkers who may be lacking in training have to establish relationships with children, foster parents and birth parents. Time is wasted due to mismatched services. For example, CWP learned of a case recently in which a parent of a teenager was required to complete a parenting skills class. The problem: the class's curriculum was geared for younger children, which did not satisfy the requirements.

One of the key factors in achieving timely permanence for children is the accessibility of social services. A federal government review of New York State child welfare services completed in January 2002 found that the state lacks an adequate array of services to prevent foster care placement or maintain children with families planning to adopt them. These services include day care, parent training, counseling, emergency services and basic needs like cash assistance and housing. Focus groups with New York City parents also revealed lack of support for getting their children home from foster care. Housing was cited as the number one issue, as well as the need for better coordinated services, mental health treatment and services after reunification.[85]

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[84] Id. For further discussion of court innovations and the challenges of changing the culture of family court, see 2000 Status Report, National Council of Family and Juvenile Court Judges, *Victims Act Model Court Sites*, http://www.pppncjfcj.org/html/model_courts.html. Also see, *Fixing Families: The Story of the Manhattan Family Treatment Court*, Journal of the Center for Families Children and the Courts, Volume 2, 2000.

[85] U.S. Department of Health and Human Services, Administration for Children and Families, State Reports, *January 2002 Review*.

Perhaps most critically, caseworkers are not able to fully monitor the safety and well-being of children in foster care and ensure they have sufficient meaningful contact with parents, siblings and other relatives.

Conversations with parents, caseworkers and foster parents underscore the concerns of advocates that despite increasing accountability, financial considerations still drive the system. Foster care agencies get paid on a per-diem basis, which essentially means that the longer children remain in foster care, the more the agencies get paid. With less children coming into care, this can add to pressures on the agency to delay either reunification or adoption.[86]

While the State has recently capped foster care payments and ACS has instituted a capacity management system to rewards better performing agencies, these measures can be strengthened. Although data suggest that some children are returning home sooner, there is cause for concern about the quality of the services and how the family will fare together. Historically, there has been a dearth of aftercare or follow-up support services to reunified or adoptive families, as well as to youth who have aged-out.[87] While this is changing as a result of statewide efforts to increase investments in these areas, not much is known about the efficacy of these services. The State Office of Children and Family Services (OCFS) will be working with ACS to more substantively evaluate some of these programs, as well as general preventive services. We welcome these efforts.

The Illinois Success Story

In 1996, the State of Illinois had the highest foster care rate in the nation, with 51,000 children in out-of-home care. By the end of 2001, they cut their foster care population by more than half, to 23,382 children. They accomplished this largely by two key innovations: making it easier for relatives, especially those with limited finances, to adopt children; and changing the system of foster care contracting.

The Illinois Kinship Guardianship program, secured through a waiver from the federal government, created another permanence option for children by subsidizing relatives who were willing to care for children long term.

In reworking their financing system, Illinois found that, "contracts based upon a fee-for-child payment can undermine the permanency because once the child welfare issues have been resolved and the child is ready for permanency, an agency faces losing revenue unless the child is replaced with a new referral... This dynamic leads to the predictable practice of focusing the work on maintaining kids in care rather than aggressively pursuing permanency."[88] As children continued to exit care in numbers that exceeded new admissions, Illinois implemented a way for agencies to lower caseloads, while maintaining their contract level and financially enhancing their program.

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[86] For an excellent history of child welfare financing see Statewide Youth Advocacy, *Thinking Out of the Box: Building and Funding a Child Welfare System That Actually Serves Children and Families* (2001), www.syanys.org. This report puts forth a worthwhile proposal to create an actuarial model that would allow agencies to purchase services tailored to the needs of the child and their family

[87] For more information about the need for post-adoption services and about support networks throughout New York State, contact the Citizens Coalition for Children in Ithaca, www.nyscc.org

[88] Illinois Department of Children and Family Services. http://www.state.il.us/dcfs. A number of other states are also piloting similar measures, including Maryland (410) 767-7216 and Colorado (303) 866-5700. For

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The Overwhelmed Front Door

A long-term strategy to reduce caseloads and make the system more manageable is by reforming child protective services – the front door to the system. As experts have noted, child protective service systems suffer from both unnecessary investigations (over-inclusion) and families who should be reported, but are not (under-inclusion).[89] In 2001, two-thirds of the approximately 54,000 reports of suspected abuse and neglect citywide ended up as unfounded, meaning that there was not sufficient evidence the parents in question neglected or abused their children. One of the reasons some states, including New York[90], are exploring child protection reform is the strain on the system caused by so many resources being expended on screening, investigating, and documenting the large number of reports received each year.[91]

Over-inclusion makes it difficult for the system to respond adequately to the serious cases of child maltreatment that CPS was designed to handle."[92]

Some families in need of services are referred by advocates who find a report of child abuse is the only way to get the attention of the child welfare system. In New York City, some service providers and schools – one of the largest sources of reports—are not aware that they can directly refer families directly to preventive services, existing in most communities.[93] A State report that included interviews with foster care caseworkers found that they believed that some of the children who come into foster care may have able to be served at home and suggested "better evaluation of a child's need for care would reduce the number of children who come into foster care."[94]

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information about Title IVE (foster care funds) waivers, consult the Children's Bureau of The Administration for Children and Families website, http://www.acf.hhs.gov/programs.

[89] Under-inclusion may also caused by the lack of a user-friendly number (e.g., an acronym) for reporting abuse, and fears that reporting will result in a harsher response than is necessary, thus adding to children's trauma or causing further trouble for struggling families. Some have also suggested that more affluent parents do not get reported or adequately investigated because they are well-connected or are able to hire a lawyer up front. See Child Welfare Watch, *Race and Class Bias in the Child Welfare System*, 1999. A recent report by the Journal of the American Medical Association found that hospital records at The Children's Hospital in Philadelphia revealed that minority children were more likely to be evaluated for physical abuse and reported to authorities than White children with comparable injuries ("Hospitals More Likely to Suspect Injuries to Black Children Are Abuse," reported in JET Magazine, October 12, 2002, at 22.

[90] In 2002, there were several legislative proposals seeking to create a demonstration project to pilot an alternative response system. While no bill passed, there were various efforts by advocates, service providers, OCFS and ACS to explore child protection reform in various meetings and conferences. For more information, contact Karen Schimke, Exec. Director, Schuyler Center for Analysis and Advocacy (SCAA), www.scaany.org.

[91] National Conference of State Legislatures, *New Directions in Child Protective Services* (1997) www.ncsl.org.

[92] Ibid. Also see Shuyler Center for Analysis and Advocacy, *A Different Front Door, Essential Reforms in Child Protection Services*, SCAA reports, Spring 2001, Vol. 1, No. 3. www.scaany.org.

[93] A recent review of 10 curricula for mandated reporters found that only one made any mention of preventive services. Fordham University Interdisciplinary Center for Family and Child Advocacy Task Force, Subcommittee on Mandatory Reporting.

[94] New York State Office of Children and Family Services (OCFS), *Report #2: Services to Children in Foster Care and Their Families*, December 2000, *at 201-202*.

In order to keep children safe with their families, child and family needs must be accurately assessed. Referrals for services must be goal directed and front-line staff need the skills to help increase family motivation and engagement.

A significant challenge in New York City is the growing number of immigrant families. Reports by the Coalition of Asian-American Children and Families and other groups serving immigrant populations find that "too many immigrant families are unnecessarily caught up in the child welfare system because of cultural differences or language barriers, or lack of economic resources, not because of intentional harm to their child."[95]

Despite the growing number of immigrant families from Asian and Latin-American countries in particular, one-size-fits-all child protective investigations fail to take into account how culture and tradition shape child-rearing practices. For example, many Asian families are hierarchical, and tend to view American families as too permissive. Physical discipline is common. Immigrant families also tend to live in more overcrowded conditions, and their immigration status might adversely affect their ability to obtain public benefits.[96]

Another example of over-inclusion is when mothers who are victims of domestic violence are charged with "failure to protect" their children, even in cases where they secured orders of protection and made courageous efforts to get away from the abuser. In a class action lawsuit (currently under appeal) brought on behalf of these mothers, a federal judge found in March, 2002 that ACS had violated the constitutional rights of these mothers and their children.[97]

b. The Culture of the System is Adversarial.

Compounding the problems that result from overload is the orientation and philosophy of the child welfare system, which is still largely based on a criminal model that originated in the 1850's. While the city should be credited with establishing that child abuse will not be tolerated, most families come to the attention of the system due to allegations of neglect. Many of these families are coping with stressors of poverty, have difficulty finding reliable child care arrangements, and/or experiencing problems related to drug and alcohol addiction, mental health problems and domestic violence.

In low-income communities, where there is limited trust between ACS and residents, some parents feel that it is better to "tough it out" on their own rather than seek assistance for fear that intervention by authorities would make matters worse.[98]

The initial contact between ACS and the family is critical because it often sets the tone for the rest of the investigation, and beyond. It is commonly known in the helping professions that in order to gain cooperation, families must be treated with respect and be involved in the solution to

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[95] The Coalition for Asian American Children and Families, *Supra note* 47.

[96] Ibid.

[97] See Nicholson v. Williams, 203 F. Supp. 2d 153 (E.D.N.Y. 2002).

[98] Somini Sungupta, "Parents in Poor Neighborhoods Wary of Child Welfare Agency," New York Times, May 31, 2000. Also see Joanne Wasserman, "Hunger has a younger face," New York Daily News, October 28, 2002 (indicating that some families experiencing hunger don't want anybody to know for fear of child welfare intervention).

the problem.[99] In contrast, parents often report to CWP staff that they are treated during ACS investigations in a dictatorial and intimidating manner. This can create anger and mistrust, followed by only superficial compliance.

When ACS conducts a child protective investigation a lot is at stake. If ACS decides to remove a child, this event will profoundly affect the future of the family. Even if the child remains in the home and ACS confirms the allegation of neglect or abuse, this could affect the parents' eligibility for employment that involves children.[100] Most parents who contact the Child Welfare Project for assistance report that they were not offered services prior to the removal of their children.[101]

Problems with child protective services are by no means confined to New York. Over the past decade efforts have been mounted in a growing number of states to reform child protective services to emphasize more cooperative approaches. A national conference held in September 2002 in Minneapolis documented recent successes of alternative response systems. These alternative intervention programs, which have successfully piloted in Missouri and Minnesota, are being considered by at least one dozen other states and Canada.[102] The "dual track" approach consists of a non-accusatory family assessment approach in lower risk cases of child neglect, while maintaining a traditional investigation approach in the higher risk cases. Nationally, evaluations of this approach have revealed promising outcomes: increased child safety, in part due to better cooperation between child protective staff and families, faster linkages to services, and reduced recidivism.[103]

In some cases, harm from adversarial contact leaves the family in a worse state than before. Nearly every parent who contacts CWP has a story about the intrusiveness of the investigation, and the resulting disruption and trauma. The following cases illustrate the problems:

Case Example

In the wake of September 11, many parents were struggling with economic hardship and emotional trauma. Ms. K, a parent, a single mother of three who contacted CWP, found her family in such a situation and decided they needed help. The family's financial situation did not allow for private counseling and Ms. K tried to find services she could afford. She and one of her sons were struggling with depression, and she was having difficulty enrolling him in school. She was advised to call ACS.

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[99] For information about family-centered practice, consult the National Child Welfare Resource Center for Family-Centered Practice, www.cwresource.org. Also see N. Berg, N. Soo Kim and S. Kelly, Building Solutions in Child Protective Services. WW. Norton & Co., 2000.

[100] Reports remain on an adults' record until the youngest child in the home turns 28.

[101] According to the New York State Office of Children and Family Services, in calendar year 2000, the families of 19.2% of the children who were admitted to foster care received preventive services. 2000 *Monitoring and Analysis Profiles With Selected Trend Data: 1996 – 2000*, at 14. www.ocfs.state.ny.us/main/reports/NYC%20MAP.

[102] See on-line evaluations for Minnesota and Missouri at the Institute for Applied Research, www.iarstl.org.

[103] Ibid. The dual track approach is also flexible in that caseworkers can switch tracks if they assess that a lower risk case is more serious, or, if a higher risk case is less serious. It should also be noted that allegations of child neglect can be high-risk cases, such as those involving abandonment of children, or lack of supervision of infants and young children.

According to Ms. K., ACS started an investigation of her family. Instead of receiving the assistance she expected, ACS workers showed up unannounced and threatened removal in front of her children. During the months of the investigation, the children learned to fear ACS. Ms. K. recalls that her son and daughter would hide each time the specialist visited the apartment. Throughout the investigation, the family was never referred for counseling nor given any resources. It was never made clear to her why ACS was coming to her home. Ms. K. related that due to the delays in getting the help her family needed, she felt that she had to communicate her desperation in order to prompt ACS to take action. Their response was to remove her children.

Three months later, her children were returned, but they had suffered from the separation. Her daughter still clings to her and has difficulty separating from her. In speaking about her feelings about her ACS experience, Ms. K says, "They make you feel so bad about yourself, you start to question yourself, thinking maybe I can't do this."

From the parents' perspective, the child welfare system initiates an adversarial process during which caseworkers and lawyers team up to gather as much evidence as possible against them. ACS's Division of Legal Services (DLS), whose lawyers prosecute child abuse and neglect cases in family court, are often unaware of the complex psychological, environmental and cultural factors that affect families and the impact of removing children from their homes. Parents are treated in a punitive and authoritarian manner, behaviors that the system finds objectionable in parents.[104]

In the following case, one family seeking help became the target of an ACS investigation after a daughter reported that she had been sexually abused in foster care several years before. The re-involvement of ACS in their lives raised fears that the daughter would be taken away again, thus exposing her again to the same danger.

Case Example

A mother of an 11-year-old girl contacted CWP because she believed that she was being investigated after reporting to the District Attorneys' office that her daughter disclosed to her and her therapist that she had been sexually abused while in kinship foster care several years before. The girl was reluctant to be interviewed further, and as a consequence, ACS became involved. They wanted the child to be evaluated by the Children's Advocacy Center (CAC), which specializes in child sexual abuse. After much encouragement by her mother, the child consented to be interviewed.

Even though ACS wanted to ensure the child's safety, mother and child were re-traumatized because ACS had removed the child two years earlier. In order to take further steps to keep her daughter safe, the mother went to family court to obtain an order

[104] See Fordham Law Review, Vol. LXX No. 2 (November 2001) for articles about the Fordham Interdisciplinary Conference, "Achieving Justice: Parents and the Child Welfare System" held in April 2001. In a section exploring the system's insensitivity to issues of class and race, the authors write: "The inability of professionals to imagine the difficulty faced by a mother with so little income, and their failure to use different criteria to evaluate poor women in poverty, was seen as part of the problem. While such women may actually be demonstrating even greater strength and resolve as they struggle to provide for their families with miniscule resources and support, such positive attributes have not been recognized readily by the system." At 414. Contact (212) 636-6342 for a copy of the Law Review.

of protection. The judge called for an investigation, and upon reviewing the case, the ACS Court Liaison called in a report to the State Central Register (SCR), the hotline for reporting child abuse. Even though it should have been clear that the abuse happened several years ago when the child was under the care and supervision of the State, the mother and the relative were accused as subjects in the child maltreatment report. Later that day, mother and daughter were awakened by Emergency Children's Services (ECS), ACS's evening and weekend child protective unit.

CWP spoke with several ACS staff during this case. The Child Protective Manager would not acknowledge that the mother had done anything positive in seeking protections for her daughter. It appeared as though ACS was seeking to build a case against the mother. At the next court hearing, the relative appeared without counsel. When an inquiry was made about this, the ACS supervisor indicated that the alleged abuser was being represented by ACS. During the hearing, the judge asked ACS about their involvement in the case. She asked if they were investigating the mother, to which they responded "no" and also asked if the child was safe with her mother, to which they responded "yes." The judge instructed ACS that if this was the case they should cease visiting the home of the family. Following the court proceeding, ACS insisted on making another home visit, but after discussion between attorneys, it was decided that ACS had no legal grounds to do so. ACS finally ceased their involvement with this family.

Unfortunately, child welfare agencies too often focus on the deficits rather than the strengths of parents. In the following case, a single working mother who was clearly trying to help her children found herself being aggressively investigated by ACS.

Case Example

A mother of two girls, ages 11 and 7, contacted the CWP in May 2002 because she was under investigation for educational neglect. She felt ACS was harassing her at her job. ACS did have legitimate concerns about the family situation, as the children had missed a great deal of school, and had health problems that had yet to be fully diagnosed. The mother explained that the children had been troubled by the events of last September 11 and the break up of their mother and father. The children had been under the care of a physician and she was in the process of securing mental health treatment for them.

CWP contacted the physician, who verified that the children were sick and that ACS was harassing the mother, whom he described as a loving parent who provided more than adequate care for her children.

Instead of supporting the mother's effort to obtain appropriate services and communicating with the health care professionals involved with family, ACS was threatening her with the removal of her children. Furthermore, ACS apparently asked the children if they would like to go live with their father, even though he was abusive and there had been an order of protection against him, according to the mother.

Through CWP's involvement in the case, ACS did a more thorough investigation, and decided to offer a dismissal with ACS supervision. Even though ACS had initially sought a court-order to remove the children, the agency concluded that a better option was to

monitor the family's progress. Even though the mother is benefiting from an array of services her family is receiving, she and her child fear the ongoing home visits by ACS.

In its investigations of alleged abuse or neglect, ACS make mistakes and sometimes fails to acknowledge them. In the following case, a diagnosis of a sexually transmitted disease (STD) in a young girl, caused ACS to remove her from her mother's custody. Even after learning that the diagnosis was false, ACS would not return the child until ordered to do so by the court. CWP received a letter from the mother which contained the following:

Case Example

"One day I received a call from the babysitter who took care of my daughter during the day, who told me that she was crying and in pain when she went to the bathroom. I immediately rushed over to see her and although, she seemed fine, I took her to the doctor. A few days later, on a follow up visit, the doctor diagnosed the girl with a sexually transmitted disease. This diagnosis turned out to be false but because of it, a call was made to ACS and the police.

Because my daughter was not in my care 24 hours a day, I asked the police to talk to my daughter to find out what happened. Instead, they interrogated me for 7 ½hours until I was permitted to contact my daughter's Godfather, who is also a police officer and they decided to talk with L. After that interview, the police told me that they were closing the case.

ACS, however, had other ideas. I was summoned to the ACS office with L. where the ACS worker immediately took L. away from me. They told me I couldn't stay with her or visit with her. Instead they gave L. to my Godmother. After a day or two the doctor notified ACS that the diagnosis that L. had a sexually transmitted disease was false. ACS still refused to let me have L. When my Godmother took ill, they moved L. to her own Godmother's and instructed her to not let me see L. ACS took L. to several doctor appointments during this time without asking me for permission to have her treated. In fact, they would not even tell me the results of these visits or let me know what L's health situation was. They never filed any papers against me in court. I made several calls to the caseworker who was handling my case and also to her supervisor, but they never told me what was happening. I also made calls to the director of the office and even the commissioner, but never received any help.

Instead, ACS instructed L's Godmother to go to court and file a petition for custody against me. In court, the judge asked why she was asking for custody and why I was giving up custody of L. When we told him that ACS instructed us to do this, he fully ordered ACS to explain the situation to him and L. was returned to me.

ACS never told me what I should do to get my daughter back. They never offered me any services or counseling or anything. They did not return my phone calls and refused to listen to the voice of my child who was calling, I want mommy."
When CWP called the field office to check on the status of the case, the supervisor confirmed that the case was closed.

c. Child safety is sometimes compromised.

In some cases ACS overreacts with harsh and punitive interventions. In other cases, however, insufficient attention is given to the impact of their decisions on the safety of children. The following case illustrates the failure to take the concerns of adolescents seriously.

Case Example

In one case involving a child protective investigation, ACS tried to coerce a 17-year-old-girl to participate in a conference with her mother, despite the fact that there was an order of protection from Criminal Court barring the mother from having contact with the girl. The mother had assaulted her daughter, resulting in a head contusion and other bruises. A social worker from the District Attorney's office, who was in disbelief when informed of the situation, had to intervene with an ACS administrator to prevent the meeting from occurring. As the girl was not safe with her mother, she was staying at the home of a friend which ACS deemed to be inadequate. When the girl's lawyer spoke to the ACS specialist to work on finding a suitable home for her, ACS showed no interest in helping.

In other cases, some parents complain that their children are placed with other relatives who are not safe resources, including former partners or spouses who had been abusive or violent. Recently, CWP learned of one case in which ACS placed a group of four siblings with their older sister, age 23, who had three children of her own. Rather than help the sister directly, ACS reportedly told her that she would help her become a foster parent if she was able to obtain suitable housing.[105]

d. Adversarial relationships exist between parents and foster care agencies.

By the time parents comes in contact with the foster care agency that has direct responsibility for their child, they have come to mistrust the actions and motives of the child welfare system. The quality of the relationship between parent and caseworker is a key factor in family reunification.[106] In some cases, parents want to fight back because they feel they have been wronged by the system. CPS investigations coupled with the prosecutorial process in family court make cooperation and trust more difficult. Case conferences that occur shortly after foster care placement can be helpful in creating a plan to resolve the family problems. Since Family Court may take six months or more to prove whether or not parents harmed their child, anything that the parent discloses at these meetings can be used against them. Attorneys are not permitted at these conferences, but parents may bring other advocates, family members and service providers.

In some cases, parents readily admit their mistakes, but in other cases parents have not deliberately harmed their children. These circumstances include: situations where a child was hurt while in the care of a relative or babysitter; immigrant families who are raising their children according to customs that do not conform to New York's guidelines; parent difficulties in

[105] Placing children directly with relatives can be a viable alternative to foster care, but further examination is needed about the quality of these placements, and whether family members are getting the help they need.
[106] In 2001, OCFS and ACS began implementing the new Common Corps Training for caseworkers and supervisors, which emphasizes the importance of the quality of the relationship between professionals and family members. Our hope is that as more staff receive and utilize this training, we will see improvements in front-line practice.

providing adequate food, clothing and shelter; and obtaining appropriate educational services for children with complex needs.

Inexperienced or inadequately trained caseworkers may have their own biases due to what they have heard about the parents. We also observe that the behavior of some parents creates obstacles to effective communication and service delivery. In some cases caseworkers respond in ways that make the situation worse. Instead of labeling the parent as "difficult" or "uncooperative," it is probably more accurate to view the parents' actions as their way of trying to resolve a problem or maintain a sense of control.

As in the following case, when CWP staff coach parents about more effective ways of expressing their concerns, this challenges caseworkers to be more objective.

Case Example

A mother contacted CWP in February 2002 because she wanted more frequent visits with her son who had been placed in foster care. She was very concerned about her son's failing grades and was frustrated by the situation. Meanwhile the contract foster care agency had observed the mother speaking loudly to her son. Because the agency assumed that the mother had an "anger" problem, they wanted to protect the child from her.

Through mediation, CWP helped the agency understand that the mother sincerely wanted to help her son, but has a loud style of communication. CWP, in turn, helped the mother become aware of her need to improve the way she communicates with her son and others. This, in turn, opened doors and she was granted more frequent visits so that she could assist her son with his school work. The agency also arranged for a tutor.

e. The System is overly punitive.

Sometimes parent-child visits are cancelled or curtailed when the parent fails to follow through with their service plan, or a conflict develops between the parent and the agency and the foster parent. Often, caseworkers see visits as compliance requirements for parents rather than beneficial activity for the family. When adolescents in foster care fail to meet behavior standards, they are sometimes similarly punished, as in the case of this young mother:

Case Example

An attorney from The Door, an agency serving adolescents, contacted CWP because her client, a 20-year old foster youth and mother of two young children, was turning 21. The Door complained that the foster care agency was refusing to allow her to remain in care after her 21st birthday under an exception to policy. The need for an extended stay was due to delays in the youth's housing applications. The agency was ready to send the mother and two children to the homeless shelter system because the foster care administrator believed she needed to be taught a lesson, and her children were going to end up back in the in foster care anyway. The agency had also kept the mother separate from her two young children for over one year without the legal authority to do so. With

pressure from the Door and CWP, ACS grudgingly allowed the youth to stay with her foster mother, who had been willing to keep her all along.

e. The child welfare system cannot do it alone.

Most child welfare cases involve poor families. This last case demonstrates the crucial role of other social service delivery systems, such as those that provide income supports and child care, in protecting children:

Case Example[107]

An ACS Child Protective Specialist had assisted a single father trying to raise his young daughter after the mother abandoned them due to drug problems. ACS helped the father establish paternity and obtain legal custody. After a stay in the shelter system, he was able to secure housing and employment. When he informed the welfare office that he had a job, his case was closed and his child care subsidy was stopped. He should have received transitional benefits to allow time to transfer his subsidy program to a child care voucher for which he was qualified by virtue of his income. Payments for his daughter's babysitter never came. Without childcare, the father had to quit his job and re-apply for welfare (TANF).

As a TANF applicant, the father had to complete the eligibility determination and review process which takes a number of weeks. The process includes an unannounced home visit, so the applicant must stay at home. All went well and he expected to begin receiving benefits. When none came, he called the office and learned that his application could not be located so he had to re-apply. As it turned out, his application was processed in error, with his daughter listed as the head of the household, and himself as the dependent child.

Meanwhile, the father had become destitute and frustrated. Even providing food for two became a daily struggle. When asked how he was managing, he said that he had been running a tab at a local bodega but they were becoming worried because he could no longer repay regularly.

The ACS Specialist helped him get emergency funds while advocating that his case be re-opened. She learned that the worker handling his case had been removed due to all the mistakes, yet, no new worker had been assigned. Eventually, the father was denied public assistance because it was determined that he was capable of working. But he couldn't work because he didn't have child care. Because he was now unemployed, he no longer was eligible for vouchers.

The ACS Specialist gave him a list of food pantries but he said they were mostly unable to help because of the high demand. The father applied for a state fair hearing but it was scheduled for months in the future. Now completely demoralized, he was sinking deeper into debt from the money he borrowed. He was now being threatened by a loan shark. Public Assistance was finally on the verge of approving some assistance for the family,

[107] A former ACS Child Protective Specialist shared this case with The Child Welfare Project.

but the father gave up. He left his daughter with a neighbor and disappeared. The child was placed in foster care.

4. Recommendations

I. Creating a comprehensive system for preventing child abuse and neglect

Implement a citywide initiative dedicated to expanding up-front prevention.

- A public awareness campaign involving partnerships with community-based organizations to help distribute educational materials about child development and positive parenting. This effort would be coupled with a community awareness campaign to address issues of ethnic diversity and language.
- A parenting education and training consortium bringing together experts in child development and other fields to consolidate knowledge about best practices in prevention and provide training and resources to community organizations.
- Expansion of successful programs such as Healthy Families New York State, a home-visiting program for at-risk families. There are 27 programs statewide, but only nine in the City. A study of the Washington Heights Healthy Families program revealed that 99% of the participants had no incidents of abuse and neglect.
- Expansion of family support services such as child care, literacy, counseling, and resource centers to increase parent competence and reduce the social isolation and stress that often lead to child abuse. Elements of effective program models, such as the Center for Family Life in Sunset Park, community-school partnerships such as those developed by Good Shepherd Services, and the Harlem Zone Initiative (formerly Rheedlen Centers for Children and Families), could be replicated.

Increase accessibility and coordination of services.

- Continued expansion of ACS Neighborhood Networks and related programs to increase community-based prevention efforts. ACS, in collaboration with Agenda for Children Tomorrow and private funding sources has already hired five organizers to manage the neighborhood networks. This effort has the potential to mobilize the public and private sectors to prevent foster care placement and better serve reunified and adoptive families.
- Set-up one-stop centers in poor communities where families can receive both government assistance and other social and health services run by non-profits. These efforts should include extensive community outreach to ensure families are aware of all available services.
- Establish a system for managing the flow of information about the vast number of services available to children and families at both the borough and community district levels. Schools, courts, community-based organizations and families must have up-to-date information about programs, as new services become available due to new or expanded funding from a wide variety of sources within government and private-sector. There must also be greater efforts to prevent duplication of services as well as eliminate bureaucratic obstacles to service delivery.

II. Reforming child protective services

The State legislature should fund a pilot alternative response system.

- Last year, several proposals were introduced recommending the creation of a "dual track" to provide assessments and services in lower risk cases to explore whether such a program can relieve some the stressors on the system. These proposed pieces of legislation can be strengthened by continued dialogue with the various stakeholders who have valid concerns about funding, child safety, staff training and the need for a thorough evaluation process. The Legislature should pass permissive legislation similar to Minnesota, and enable New York to design an alternative response system that will work best.
- Upgrade training for mandated reporters of abuse and neglect to include information about preventive services. Efforts are also needed to deter the numerous harassment calls, which take precious time and resources away from reports of genuine concern about children at risk.

III. Increasing the capacity of the system

Make improvements in Family Court.

- The State legislature must raise the per hour fees paid to court-appointed attorneys who represent low-come parents and children in foster care. The city should continue to explore ways to fund more legal services, such as those provided by community-based legal services offices.
- Support expansion of court innovations, such as the Family Treatment Court and Model Court, which have helped families move through the system more quickly. Pilot projects that emphasize early case conferencing and utilization of social workers in the court also deserve support.
- In all appropriate cases ACS should be required to prove that reasonable efforts (required by Federal law) were made to keep the child at home. Attorneys should be required to present specific evidence of the agencies' attempts to provide services designed to keep children at home.
- Prior to appearing in court parents should receive a handbook that fully explains their rights and responsibilities, such as those created by ACS and advocates. Orientation sessions should also be made available in the court.

Secure needed federal funds.

- Funding for family court has not kept pace with the new requirements under the federal Adoption and Safe Families Act (ASFA), which include shorter time frames for ACS, foster care agencies and the courts to achieve permanent homes for children through family reunification or adoption. Regardless of ASFA's merits, it is an unfunded mandate. Recognizing this, federal lawmakers passed follow-up ("ASFA II") legislation two years ago to assist states, but no finds were appropriated. Our legislators should organize an effort to seek such funds.
- The federal government should increase the amount of funds that states can use for up-front prevention and aftercare services to strengthen the continuum of family support services. As suggested by the National Governors Association, states should be given maximum flexibility in using foster care funds and greater waiver authority for demonstration projects.

- City and state agencies should continue to explore how Medicaid funds could be tapped to pay for targeted case management and critically-needed mental health services for children and families, which are currently capped.

Create more incentives for foster care agencies.

- As Illinois and a number of other states are doing, change financing structures to allow agencies to achieve timely permanence and maintain funding levels to reduce caseloads and improve services. Nearly a decade ago, New York City experimented with an alternative to the per-diem system through a similar program called HomeRebuilders, which showed promise by giving agencies the flexibility to intensify family reunification efforts by frontloading services. This should be revisited.
- Learn from states like Illinois which has decreased foster care stays for children by establishing a subsidized kinship guardianship program, enabling low and modest income family members to care for children long term. The State, specifically the Governor's Office and OCFS, should secure a waiver from the federal government to support legislation introduced in Albany last year to create such a program.

IV. Changing the culture of the system

Improve relationships between families, caseworkers and the family court.

- While some initiatives by ACS and the Family Court are helping to change the culture, a broader, well-coordinated organizational development program is vital. Activities should include meetings with all levels of staff at ACS, including its Division of Legal Services (DLS), law guardians and parents' attorneys, judges, and foster care agencies to re-examine assumptions about the goals of the child welfare system and the values of enhancing family life.
- Training must focus on improving engagement skills. There should be wider use of family strength inventories and evaluation tools, such as those used in Westchester County, and curricula such as Family Development, developed by Cornell University, that is used in child protective services outside of New York City and in Head Start Programs, operated by ACS.
- Foster care standards must be raised and enforced. As soon as children enter foster care, agencies and caseworkers must prioritize establishing good communication between parents and foster parents. Further efforts are needed to increase involvement of parents in the planning for their children.

Strengthen program evaluation and accountability.

- There is growing agreement that program evaluation has focused more on compliance with paperwork requirements and deadlines than on measures related to the quality of services. Both ACS and the New York State Office of Children and Family Services (OCFS) are attempting to focus more on outcome-based measures, and there are initiatives to gather feedback from parents, foster parents and youth about their experiences. These efforts must be greatly expanded.

- As the demand for preventive services increases, more information is needed about their efficacy, and their ability to prevent the occurrence of child maltreatment in addition to preventing foster care placement.

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